

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

2018 OCT 26 PM 12:25


ZIP TOP, LLC AND FINELL CO., LLC,  
PLAINTIFFS,

V.

BLUEAVOCADO CO.,  
DEFENDANT.

§  
§  
§  
§  
§  
§  
§

CAUSE NO. 1:18-CV-276-LY

CLERK  
WESTERN DISTRICT OF TEXAS  
BY 

**ORDER**

Before the court in the above-styled and numbered cause is Rule 12(c) Motion for Judgment filed September 17, 2018 (Dkt. No. 18). The motion seeks a declaration of the following: (1) Zip Top® containers do not infringe BlueAvocado's U.S. Design Patent No. D753,444; (2) Zip Top® containers do not infringe BlueAvocado's U.S. Patent No. 10,000,033; (3) Zip Top® containers do not infringe BlueAvocado's U.S. Patent Application No. 14/598,511; (4) the Zip Top® word trademark does not infringe BlueAvocado's (re)zip® word trademark; and (5) the Zip Top® logo trademark does not infringe BlueAvocado's (re)zip® logo trademark. BlueAvocado admits in its Answer and Counterclaims (Dkt. No. 17) that it is no longer disputing non-infringement of the '444, '033, '511 patents. BlueAvocado also admits in its answer that it is no longer disputing infringement of BlueAvocado's (re)zip® word and logo trademark. Accordingly,

**IT IS THEREFORE ORDRED** that Rule 12(c) Motion for Judgment filed September 17, 2018 (Dkt. No. 18) is **GRANTED**.

**IT IS FURTHER DECLARED** that (1) Zip Top® containers do not infringe BlueAvocado's U.S. Design Patent No. D753,444; (2) Zip Top® containers do not infringe BlueAvocado's U.S. Patent No. 10,000,033; (3) Zip Top® containers do not infringe

BlueAvocado's U.S. Patent Application No. 14/598,511; (4) the Zip Top® word trademark does not infringe BlueAvocado's (re)zip® word trademark; and (5) the Zip Top® logo trademark does not infringe BlueAvocado's (re)zip® logo trademark.

**IT IS FURTHER ORDRED** that the Tutorial scheduled on November 9, 2018, at 9:30 a.m. is **CANCELLED**.

**IT IS FURTHER ORDERED** that the claims-construction hearing scheduled on February 19, 2018, at 9:30 a.m. is **CANCELLED**.

**IT IS FURTHER ORDERED** that the parties are to submit to the court a Proposed Agreed Scheduling Order, in accordance with Federal Rule of Civil Procedure 26(f), that follows the form scheduling order of this court located on the website for the United States District Court for the Western District of Texas ([www.txwd.uscourts.gov](http://www.txwd.uscourts.gov)), the "Forms" tab, "Civil," "Austin Division," "Proposed Scheduling Order for Judge Yeakel," **on or before November 9, 2018**.

SIGNED this 26th day of October, 2018.

  
\_\_\_\_\_  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE